IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 16412 of 2006(D)

PETITIONER:

V.S. MARAIAN,
VALAVATHUCHIRAYIL, MARARIKULAM SOUTH,
PATHIRAPPALLY P.O., ALAPPUZHA DIST.

BY ADV. SRI.K.K.SATHEESH.

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY THE UNDER SECRETARY,
   MINISTRY OF HOME AFFAIRS, FREEDOM FIGHERS'
   DIVISION, LOK NAYAK BHAVAN, NEW DELHI-110 003.

2. **STATE OF KERALA,**
   REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT.,
   GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.RAJESH NAIR, CGC,
SRI.P.PARAMESWARAN NAIR,ASST SG,
GOVERNMENT PLEADER SRI. K.V. MANOJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16412/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, ALLEPPEY VIDE ORDER NO. R. DIS. 22005/74/F6 DTD. 01/06/1974.

EXT.P.2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE RESPONDENTS DT. 20/04/1998.

EXT.P.3: COPY OF THE PKC ISSUED BY SRI. P.K. SUKUMARA @ KUNJAN SUKUMARAN DT. 20/04/1998.

EXT.P.4: COPY OF THE PKC ISSUED BY SRI. NARAYANAN RAMANKUTTY DTD. 19/09/2001.

EXT.P.5: COPY OF THE JUDGMENT DTD. 11/11/2002 OF THIS HON' BLE COURT IN O.P. NO.33083/02.

EXT.P.6: COPY OF THE COMMUNICATION NO. 52/CC/KER/1012002-FF (SZ) DTD. 16/04/2003 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.7: COPY OF THE JUDGMENT DTD. 07/04/04 OF THIS HONOURABLE COURT IN W.P.(C). NO. 16610/03.

EXT.P.8: COPY OF THE ORDER DT. 05/08/2005 OF THIS HONOURABLE COURT IN I.A. NO. 11199/05 IN W.P.(C). NO. 16610/03.

EXT.P.9: COPY OF THE REPRESENTATION DTD. 02/08/2005 SUBMITTED BY THE PETITIONER.

EXT.P.10: COPY OF THE NARC ISSUED BY THE SUPDT. OF POLICE, ALAPPUZHA DT. 02/08/2005.

EXT.P.11: COPY OF THE NARC FROM THE CJM COURT, ALAPPUZHA IN CASE NO. P.E. 7/1122 ME.

EXT.P.12: COPY OF THE LETTER NO. 70672/FFP A2/2005/GAD DT. 08/06/2005 ISSUED BY THE R.2. TO THE PETITIONER.

W.P.(C). NO.16412/2006:

RESPONDENT'S EXHIBIT:

EXT.R1.A: COPY OF THE LETTER (NO.70672/FFP A2/2005/GAD) DTD. 08/06/2006 ISSUED BY THE GOVT. OF KERALA IN FAVOUR OF THE R.1.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.16412 OF 2006-D

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Dated this the 20th day of August, 2007

JUDGMENT

The petitioner is aggrieved by the order Ext.P12 passed by the State Government refusing to recommend his case for sanction of Central pension. The petitioner was a freedom fighter who had actively participated in the Punnapra – Vayalar Movement during the freedom struggle. It is stated that an arrest warrant was issued against him by the Special Magistrate Court, Alleppey in case No.P.E.7/1122 ME and in order to evade the arrest, he had gone underground for a period of about ten months from 7.3.1122 ME to 6.1.1123 ME.

2. Ext.P1 is the order by which he was granted pension under the Kerala Freedom Fighters Pension Rules on account of his participation in the Punnapra – Vayalar Struggle. After the said movement was recognised by the Central Government for SSS Pension with effect from 20.1.1998, the petitioner submitted an application for Central Pension as per Ext.P2. He had produced the Personal Knowledge Certificate issued by a prominent freedom fighter Shri P.K. Sukumaran @ Kunjan Sukumaran who had undergone imprisonment in the Central Prison, Trivandrum for a period of

more than 5 years and who was also the recipient of SSS Pension as well as the holder of 'Thamrapathra". Ext.P3 is the Personal Knowledge Certificate issued by Shri P.K. Sukumaran and Ext.P4 is the Personal Knowledge Certificate issued by Shri Narayanan Ramankutty. Along with that, he had produced the NARC issued from the Chief Judicial Magistrate Court, Alappuzha.

3. The petitioner had approached this court earlier by filing O.P.No.33083/2002 which was disposed of by Ext.P5 judgment directing the second respondent to take a final decision within the time allowed by this court. Thereafter, by Ext.P6, the first respondent informed that the second respondent did not recommend his claim for pension on certain grounds. That was challenged before this court by filing Writ Petition No.16610/2003 which was disposed of by Ext.P7 judgment. A learned Single Judge of this court considered the contentions elaborately in the light of the principles stated by this court in **Gurdial Singh v. Union of India** ((2001 (8) SCC 8). The crucial directions are contained in paragraph 6 of the judgment. The judgment shows that this court held that the personal knowledge certificates issued are by competent persons which was conceded in the light of Exts.P5 and P7 convict registers produced in that case. What was required was a proper NARC. After considering the issue, the following direction was issued:

> "if the petitioner produces a proper NARC from the CJM Court, Alappuzha or from any other curt in Alappuzha District concerned with P.E.7/1122 wherein the petitioner was an accused within a period of five months from today, the State Government shall reconsider his case and forward the requisite recommendation to the Central Government recommending for grant of SSS Pension to the petitioner. The petitioner is free to produce any useful evidence also to substantiate his claims. Upon receipt of recommendation by the State Government, if any the Central Government shall pass fresh orders in modification of Ext.P11 under intimation to the petitioner. In the event of petitioner not producing fresh NARC as indicated above, within the period mentioned, Ext.P11 will stand confirmed."

4. Ext.P11 therein is Ext.P6 herein. Ext.P8 is the order in I.A. No.11199/2005 in the said Writ Petition whereby the period provided in the judgment was extended by one month from the date of the order, i.e. 5/8/2005. Thereafter, the petitioner produced fresh NARC, viz. Exts.P10 and P11 issued by the Superintendent of Police, Alappuzha and the CJM Court, Alappuzha respectively, along with Ext.P9 representation dated 3.9.2005. Ultimately, Ext.P12 order has been passed rejecting the documents produced by the petitioner. The view taken therein is that the petitioner has failed to produce a proper NARC from the CJM Court, Alappuzha as directed in the judgment of this court. It is also pointed out that NARCs. have not been submitted within the time limit granted by this court.

5. Learned counsel for the petitioner invited my attention to Exts.P10 and P11 which are the NARCs. produced by the petitioner. In

Ext.P10 it is certified that "no records are available in this office regarding the Freedom Fighting Movement and the participation of V.S. Marian, Valavathuchirayil, Mararikulam South, Pathirappally P.O., Alappuzha in the National Freedom Struggle. In Ext.P11 which has been submitted in proper form giving the details of the case number and details of the documents required, it is recorded by the office of the CJM Court that "application for copy of arrest warrant in case No.P.E.7/1122. Verified the relevant and available registers, no such case was seen in it. The records are not available in this court. Hence the application is rejected." Learned counsel submits that evidently the application was filed with reference to case No.P.E. 7/1122 and it is clear from the endorsement that the records are not available in that court and therefore the NARC is in proper form. In the order Ext.P12, what is pointed out is that the petitioner has not produced a proper NARC from the CJM Court, Alappuzha or from any other court in Alappuzha District concerned with P.E.7/1122 wherein he was an accused. The said reason does not appear to be correct in the light of the facts stated in Ext.P7. In the certificate given by the Superintendent of Police also, it is stated that records are not available regarding the participation of V.S. Marian in the National Freedom Struggle. Evidently, that is with reference to the petitioner himself.

6. Learned Govt. Pleader points out that the NARC produced from

the Chief Judicial Magistrate's Court is not in accordance with the rules prescribed by the SSS Pension scheme and that in the NARC from the Superintendent of Police, Alappuzha, it is not stated that the petitioner has not mentioned the case number and hence both are unacceptable. This is a case where the petitioner is seeking the benefit of pension for participation in the Punnapra – Vayalar struggle. Based on his sufferings, he has been granted pension by the State Government by Ext.P1. The eligibility for grant of the said pension was also the period of underground suffering which is claimed in Ext.P2 also. Therefore, the claims are identical. Hence, in the light of the fact that he was granted pension by the State Government, the refusal of the State Government to recommend the same for Central Pension, being purely based on a technical approach, is not correct. This position is reiterated in **Sadananda Swamy v. Union of India** (2004 (2) KLT SN page 76, case No.92). In similar circumstances, this court held that "in such circumstances, taking a lenient view one can only go by the consistent pleading of the petitioner that the case relates to freedom movement – a case which can as well be accepted in the light of the abscondence certificate issued by the admitted Thamrapathra holders and also of Ext.P6 certificate issued by the President of Freedom Fighters' Association who seems to belong to the very same taluk as the petitioner himself." Judged in the light of the view taken therein, it is clear that the

petitioner who had been a recipient of State pension for participation in the very same movement, cannot be held ineligible for want of a fresh NARC by the State Government. The other reason that the documents were not produced within the permitted period provided in the judgment is also not correct in view of Ext.P8 order passed by this court granting extension of the period. At any rate, it is upto the Government of India to consider the sufficiency of the documents and take a decision on the merits of the claim.

7. Therefore, Ext.P12 is quashed. There will be a direction to the State Government to recommend the case of the petitioner for grant of SSS pension within a period of six weeks from the date of production of a copy of this judgment. Upon receipt of the records and recommendation by the State Government, the first respondent will pass appropriate orders, within a further period of three months. The first respondent also will consider the claim for payment of arrears from the date of receipt of the application, being 20.4.1998, in the event of sanction of pension.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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